

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

EIS INC.,)
)
)
Plaintiff,)
)
)
v.) Cause of Action No.: 1:23-CV-9941
)
)
TBMBM, INC.)
)
)
Defendant.)

COMPLAINT

Plaintiff EIS Inc., (“EIS”) brings this complaint against Defendant TBMBM, Inc. (“TBMBM”):

THE PARTIES

1. EIS is a Delaware corporation. Its principal place of business is in New York County, New York (EIS’s “New York office”).
2. TBMBM is an Ontario business corporation. On information and belief, its principal place of business is in Oakville, Ontario, Canada.

JURISDICTION AND VENUE

3. This Court has subject-matter jurisdiction over this matter on pursuant to 28 U.S.C. § 1332(a), based on diversity of citizenship and the amount in controversy exceeds \$75,000.
4. Venue in the Southern District of New York is proper pursuant to 28 U.S.C. § 1391(b)(2).

FACTUAL BACKGROUND

5. EIS sells a wide variety of sexual wellness products.
6. TBMBM is in the business of reselling EIS's products.
7. For the past four or five years, EIS and TBMBM have had a significant and ongoing business relationship whereby TBMBM has sourced product from EIS.
8. From March 2023 through October 2023, as part of the parties' ongoing business relationship, TBMBM knowingly and repeatedly communicated into New York with EIS's New York office, for the purpose of procuring multiple business transactions with EIS in order to source product. At least 24 transactions occurred during that time, each resulting in TBMBM purchasing product from EIS's New York office. EIS's New York office accepted and processed those orders.
9. For each order, EIS promptly delivered the goods to the locations specified by TBMBM.
10. TBMBM accepted the goods from each delivery.
11. EIS issued an invoice to TBMBM in connection with each order. The invoices identified the products sold pursuant to the order, as well as the price and quantity sold for each such product. The invoices were issued with "Net 30" payment terms, and as such the invoices became due 30 days after issuance.
12. The issued invoices for the orders made between March and October 2023 are as follows:

Invoice Number	Amount	Date Issued	Payment Due Date
2190028606	\$2,097.60	March 9, 2023	April 8, 2023
2190028766	\$449,931.52	March 29, 2023	April 28, 2023
2190028948	\$65,132.04	April 10, 2023	May 10, 2023
2190028949	\$36,975.88	April 10, 2023	May 10, 2023
2190030383	\$12,569.08	May 8, 2023	June 7, 2023
2190030385	\$26,311.18	May 8, 2023	June 7, 2023
2190030414	\$8,330.20	May 15, 2023	June 14, 2023

2190030415	\$8,330.20	May 15, 2023	June 14, 2023
2190030760	\$18,781.80	May 25, 2023	June 24, 2023
2190030761	\$18,751.82	May 25, 2023	June 24, 2023
2190030586	\$16,980.26	June 12, 2023	July 12, 2023
2190030587	\$15,398.48	June 12, 2023	July 12, 2023
2190030748	\$53,610.66	July 6, 2023	August 5, 2023
2190030752	\$30,118.06	July 7, 2023	August 6, 2023
2190030818	\$23,877.12	July 24, 2023	August 23, 2023
2190030964	\$14,762.80	August 14, 2023	September 13, 2023
2190031028	\$45,039.65	August 22, 2023	September 21, 2023
2190031108	\$17,829.60	September 6, 2023	October 6, 2023
2190031117	\$5,193.89	September 8, 2023	October 8, 2023
2190031118	\$4,596.36	September 8, 2023	October 8, 2023
2190031175	\$42,461.88	September 20, 2023	October 20, 2023
2190031179	\$31,846.32	September 20, 2023	October 20, 2023
2190031216	\$3,358.08	September 27, 2023	October 27, 2023
2190031250	\$3,794.63	October 3, 2023	November 2, 2023

13. Two additional invoices were issued on October 17, 2023 for products delivered to and accepted by TBMBM: Invoice No. 2190031315 in the amount of \$27,085.76, and Invoice No. 2190031317 in the amount of \$41,538.94. Those invoices will become past due if payment has not been made by November 16, 2023.

14. During the relevant time period, several credits totaling \$2,906.09 were applied to TBMBM's account. On November 9, 2023, TBMBM made a payment of \$250,000 towards Invoice No. 2190028766, which has been applied to its account. EIS also provided TBMBM a marketing credit of \$116,986.35, which has been credited to its account.

15. TBMBM has failed to pay the invoices within 30 days of issuance. As such, the purchase price for the goods for all 24 orders is past due.

16. To date, the total past-due balance for the purchase price of the goods (net of credits and payments) is \$586,186.67.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT – ACTION FOR THE PRICE
(New York Uniform Commercial Code § 2-709)

17. Plaintiff restates and realleges paragraphs 1 through 16 as if fully set forth herein.
18. EIS and TBMBM had a valid and enforceable contract for the sale of goods.
19. EIS sold and delivered goods to TBMBM for each of TBMBM's 24 purchases.
20. Defendant accepted those goods.
21. Despite accepting the goods, TBMBM has failed to make payment for the purchase price of goods sold and such amounts are now past due.
22. EIS has been damaged in the amount of \$586,186.67 for the unpaid price of the goods accepted (plus any amounts that become past due during the pendency of the litigation).
23. Pursuant to N.Y.U.C.C. § 2-709, EIS is entitled to recover the price of the accepted goods.
24. EIS is further entitled to incidental damages in the form of prejudgment interest pursuant to N.Y.U.C.C. § 2-709, § 2-710 and C.P.L.R. § 5001.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- (a) Judgment in the amount of \$586,186.67, with pre-judgment interest;
- (b) Any further amounts that become past due during the pendency of the litigation, with pre-judgment interest;
- (c) Costs; and
- (d) Such other relief as the Court may deem just and proper.

Respectfully submitted,

S/ Rajeev K. Adlakha

Rajeev K. Adlakha

VORYS, SATER, SEYMOUR & PEASE LLP

200 Public Square, Suite 1400

Cleveland, Ohio 44114-2327

Tel: (216) 479-6175

Email: rkadlakha@vorys.com

Attorneys for Plaintiff EIS Inc.